PART IV

Section 2-C—(ii)

STATUTORY ORDERS ISSUED BY THE STATE GOVERNMENT UDER THE CENTRAL ACTS AND STATE ACTS

GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR)

Labour Dispute :—Industrial Dispute between the workmen and the management of M/s. Motor Industries Co., Ltd., Audugodi, Bangalore.

Award of the Labour Court, Bangalore—published.

Read the following papers :

(1) Letter No. 1660/67-68, dated 23rd March 1968 from Shri P. T. Kadkol, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 23rd day of March 1968

Present :

Sri P. T. Kadkol, B.SC., LL.B., Presiding Officer.

Reference No. 39 *of* 1967

Workmen represented by the Secretary, Mico Employees' Association, Bangalore-11. *I Party*

Vs.

The Management of M/s. Motor Industries Co., Ltd., Audugodi, Bangalore. *II Party*

Reference Government Order No. LMA 205 *LLD* 67, *Dated 6th April* 1967

AWARD

The Government of Mysore being of opinion that an industrial dispute exists between the workmen and the Management of M/s. Motor Industries Co. Ltd., Bangalore have referred it to this Court for adjudication under Section 10(1) (c) of the Industrial Disputes Act, 1947, by their Order No. LMA 205 LLD 67 dated 6th April 1967, setting out the following points of dispute for adjudication :—

"(*a*) Are the employees of the Motor Industries Co. Ltd., represented by the Mico Employees' Association, justified in demanding the withdrawal of the orders of dismissal passed by the Management against (1) Mr. A. Sandhyavoo (1603/91817); (2) Mr. G. Prabhakar (440/11409); and (3) Mr. M. V. Vasudevan (2982/31847), and their reinstatement with back wages and continuity of service ?

(*b*) If not, are the above three dismissed employees entitled to any other relief ?"

2. The three workmen covered by this Reference, who were in the employ of the Mico, Bangalore (Motor Industries Co. Ltd., Bangalore), have been dismissed from service by the Management thereof, on 12th August 1966, on the ground that they were found guilty of some acts of misconduct, in a domestic enquiry held against them. Their dismissal is the subject matter of the present industrial dispute. Their cause has been espoused by the Mico Employees' Association, Bangalore, which is a registered Trade Union. This Union as representing the Workmen is the first Party and the Management of the Mico is the Second Party in this proceeding. Mr. B. R. Dolia and Mr. S. Krishnaiah have appeared for the Union and Mr. C. R. Doraswamy and Mr. M. Viswanath have appeared for the Management.

3. The Mico, Bangalore, works in four shifts. The first shift works from 6 A.M. to 2 P.M., the second from 2 P.M. to 10 P.M. and the third from 10 P.M. to 6 A.M. The fourth, called the general shift, works from 7-45 A.M. to 5 P.M. The Mico has, in its employ about 3,500 workmen. In the night shift from 10 P.M. to 6 A.M., only about 150 to 200 employees, work. The rest are distributed between the general, the first and the second shifts.

4. The Union put up a charter of demands before the Management on 24th August 1964. There were long drawn discussions about them, between the Union and the Management. They did not come to any definite settlement. Hence at the instance of one or the other of the two parties, the dispute regarding the demands, was admitted to conciliation by the Deputy Labour Commissioner and Conciliation Officer, Bangalore. With his aid and assistance, a settlement was reached. It was recorded under Section 12(3) and Section 18(3) of the Industrial Disputes Act, on 23rd December 1964. This settlement has been marked in evidence at Ex. M. 2. I will discuss its provisions in detail, later. It is sufficient at this stage, to note clause (5) of Part I (General) thereof. It reads as under :—

> "In order to ensure continuation of smooth working the Company and the Association agree that in no case will they resort to direct action such as lock-outs, strikes in any form, go slow and other coercive action without 4 days notice ....."

5. One Mr. B. G. Shenoy, was working as a clerk in the Planning Department of the Company (By Company, I mean, Mico, Bangalore). The Management issued two charge-sheets to him on 10th May 1966, at the interval of a couple of hours, to show cause why suitable action should not be taken against him for some acts of misconduct as defined in the Certified Standing Orders. When issuing him the second charge sheet, the Management directed his

suspension from service pending enquiry into the charges. Prior to this incident, the Management had charge-sheeted Shenoy, found him guilty at a domestic enquiry and imposed the punishment of suspension for one day. This suspension was to be put into effect on 4th May 1966, but was postponed to some future date, as a result of some understanding between the Union and the Management, as the Union was busy with its elections which were to be held on 7th May 1966. (*Vide* Ex. M. 19, dated 10th May 1966). The Union and the Management were to meet and discuss the question of Shenoy's suspension for one day. It was when this was the position, that two more charge-sheets were issued against Shenoy on 10th May 1966 and he was placed under suspension pending enquiry into them.

6. The Union espoused the cause of Shenoy and wrote the letter, Ex. M. 20 to the Management on 11th May 1966. It demanded the withdrawal of the suspension order dated 10th May 1966 passed against Shenoy. The Union has said in this letter addressed to the Management:

> "The action taken by you in suspending Mr. Shenoy is unfair and unjust. We would, therefore, request you to withdraw the suspension immediately. Please note that if you do not withdraw the same we will have no other alternative but to withdraw our representative from the Canteen Managing Committee.
>
> Further, in case you do not withdraw the suspension order immediately and if the news of suspension spreads inside the factory, it may lead to a bad repurcussion from the side of the employees and we would request you not to give room for any such incident."

7. The same morning (11th May 1966) the representatives of the Management and the Union, met around 9-45 A.M. to discuss the question of suspension of Shenoy and settle it amicably. The talks went on till about 12-30 P.M.

when the parties reached some understanding but it was not finalised. Then there was a lunch break. The parties agreed to meet again in the afternoon and finalise the matter. The stage which was reached before the lunch-break was that the Management suggested that it would withdraw the suspension Order, if Shenoy gave a letter of apology and expressed his regrets and gave an assurance of future good conduct and the Union suggested that a caution letter might be given to Shenoy and the order of suspenion be withdrawn. This matter was to be finalised in the meeting to be held in the after-noon.

8. But things took an ugly turn at about 2 P.M. in the afternoon. The workers of the first shift who were to go out at 2 P.M. did not go out but stayed in. The workers of the second shift came in. All the workers of the First, Second and the General shifts resorted to a lightening strike. The entire work was stopped. All the workers, forming themselves into groups and batches, started moving about, shouting some slogans. This strike continued for about 3 hours. Naturally, there was a pandemonium in all the departments.

9. The representatives of the Management and the Union met again at about 2-45 P.M. Negotiations were carried on. Some settlement was reached at about 5 or 5-30 P.M. It was announced. . Thereafter the workers of the General Shift and the First Shift went out of the premises and the workers of the Second Shift resumed their duties and the ugly chapter was closed for the day.

10. On 18th May 1966, Mr. A. Lakshman Rao, the Assistant Establishment Officer in the G. 2 (Personnel) Department gave a written complaint to the Chief Personnel Officer (Mr. Gopinath) to the effect that on 11th May 1966 (the day of the strike) Sandhyavoo, Prabhakar, Vasudevan (the three workers covered by this Reference), Jayaram and Sreedharan, leading a group of about 100 persons entered his G. 2 Department at about 3-30 P.M. shouting, and calling upon the members of the staff of that

Department to leave office and join them, surrounded him, kicked him, pushed him out, etc. This complaint is Ex. M. 3. On the basis of this complaint, the Management issued charge-*cum*-show cause notices to the five persons mentioned above on 25th May 1966 and called for their explanations. The five workers gave their explanations. The Management did not feel satisfied with them. Hence it directed all the five workers to face a domestic enquiry to be held by Mr. B. R. Puttananjappa appointed by it for that purpose on the charges levelled against them. The charges, explanations, and enquiry notices are at Exts. M. 4 to M. 8.

11. The Enquiry Officer held the domestic enquiry, day to day, from 30th June 1966 to 9th July 1966. The Order sheet and the records of enquiry conduced by Mr. Puttananjappa are at Ex. M. 9. The documents marked Exts. M. 10, M. 11 and M. 12 were produced during the enquiry. Ex. M. 13 is the report submitted by Mr. Puttananjappa at the end of the enquiry. It contains the findings recorded by him. The Management has accepted the findings of the Enquiry Officer and passed orders dismissing Vasudevan (Ex. M. 14), Prabhakar (Ex. M.15) and Sandhyavoc (Ex. M. 16). The order passed against Jayaram and Sreedhar are at Exts. M. 17 and M. 18. No action has been taken by the Management against Jayaram and Sreedhar.

12. In response to the notice issued by this Court, the Union has submitted its statement of claims dated 16th May 1967. It runs into nine pages. Most of the facts stated by me above have been set out therein, in detail. Then the Union has contended that the orders passed by the Management dismissing the three aggrieved workmen are void, illegal, arbitrary and perverse mainly on the following grounds :—

(1) The finding that the strike resorted to by the workers on 11th May 1966, was illegal, is erroneous ;

(2) Clause 5 of the Settlement dated 23rd December 1964, covers only the matters relating to the charter of demands, which were conceded, and does not cover the present strike ;

(3) There was no charge against the aggrieved workmen to the effect that they had participated in an illegal strike. Hence the question whether the strike was illegal need not have been gone into ;

(4) The three workmen have been singled out for punishment. It is a hostile discrimination against them. It amounts to victimisation as well as unfair labour practice.

(5) The enquiry officer has failed to take into account the testimony of the defence witnesses.

(6) The action of the Management lacks good faith.

(7) The Management has passed the orders of dismissal to prevent the workmen from participating in their legitimate trade union activities.

(8) The aggrieved workmen are not guilty of any misconduct under the Standing Orders referred to in the charges levelled against them.

(9) The action taken by the Management against the three aggrieved workers is in complete violation of the agreement reached in the evening of 11th May 1966, by virtue of which, the strike came to an end.

13. The Management has submitted its statement of objections dated 3rd June 1967. It has also set out most of the facts and then categorically denied all the grounds of attack catalogued above.

14. The Union has submitted its Rejoinder to this objection statement put in by the Management. It is

dated 12th June 1967. Therein, it has reaffirmed the grounds covered by it in the claim statement and denied the averments made by the Management in its statement of objections.

15. The Management submitted that it would not lead any additional evidence before me to prove the charges against the delinquents. Hence on the basis of pleadings, the following additional issues have been framed (*Vide* Order Sheet dated 29th June 1967 and 5th October 1967) and set down for hearing :—

(I) Are the findings recorded at the domestic enquiry and the impugned orders based on them liable to be set aside, with respect to any or all of the three aggrieved workmen on any of the following grounds :—

(i) The Management was lacking in *bona-fides* ;

(ii) The Management is guilty of victimisation or unfair labour practice in passing the impugned orders ;

(iii) The Management is guilty of the violation of any of the principles of natural justice in conducting the enquiry and passing the impugned orders ; and

(iv) The impugned findings and orders are grossly erroneous or perverse, on the basis of the evidence placed on record ;

(II) Are the aggrieved workmen or any of them entitled to be reinstated with or without back wages and continuity of service ?

(III) What Award ?

(IV) Does the First Party prove that there was an agreement between itself and the Management of the Second Party that no workman

should be victimised in relation to any incident connected with the strike ?

(V) If so, do the proceedings taken against the three aggrieved workmen amount to violation of the said agreement and thus subjecting them to victimisation ?

(VI) If so, are these proceedings, findings recorded in them, and the impugned orders passed on their basis liable to be set aside ?

Parties were directed to lead evidence on these issues and they have done so. The Union has examined two witnesses and produced eight documents. The management has examined one witness and produced twenty four documents. This is all the evidence in the case.

16. All the three workmen have been charged with being guilty of misconduct under Clauses (2), (3), (13) and (18) of Standing Order No. 22 of the Certified Standing Orders of the Establishment. The Enquiry Officer has found them guilty on all counts of the charge. So, it is necessary to know what the four clauses of Standing Order 22 provide. A copy of the Standing Orders has been produced and marked Exhibit M-1. Standing Order 22 runs as under:—

Standing Order 22 *Misconduct.*

Without being exhaustive, the following acts or omissions shall be treated as misconduct:—

(2) Striking or stopping work (whether by staying out or staying in) either singly or in combination with others in contravention of the provisions of any act or modifications thereof for the time being in force.

(3) Inciting any other workman to strike or stop work in contravention of the provisions of any law or modification thereof for the time being in force.

(13) Drunkenness, riotous or disorderly behaviour within or immediately adjoining the Company's premises or properties or any act subversive of discipline, or efficiency.

(18) Loitering within the Company's factory premises or absence without permission from the appointed place, of work.

One of the punishments provided for each one of these acts of misconduct is dismissal.

17. (*a*) The charge against Vasudevan is (*Vide* Ex. M-4 (A):—

"It is reported that on 11th May 1966, while you were on duty in the General Shift between 7-45 A.M. and 5 P.M. you stopped work from 2 P.M. onwards and left your workplace without permission. Subsequently, you, along with an unruly crowd of more than 50 employees entered the G. 2 Department somewhere between 3 P.M. and 3-30 P.M. incited the clerks and officers of that department to stop work, come out and join the illegal strike. You behaved in the most disorderly manner, intimidated the officers and assaulted one of them, Mr. A. Lakshman Rao."

The above charge sheet is dated 25th May 1966. It could not be served on Vasudevan, the very day. It was served on him, with the covering letter Ex. M-4 A (1) on 6-6-1966. The explanation given by him is Ex. M. 4B. Ex. M. 4C is the enquiry notice issued to him.

(*b*) The findings recorded against him by the Enquiry Officer are these:—

He is guilty of striking and stopping work singly and in combination with others; of inciting other workers to do so; of riotous and disorderly behaviour within the Company's

premises; and of absence without permission from the appointed place of work.

It may be noted here that he has not been found guilty of assaulting Lakshmana Rao.

18. The charge sheet against Prabhakar dated 25th May 1966 is at Exhibit M-5A. The charge is identical in all respects with the charge against Vasudevan. His reply is Exhibit M-5 B. Exhibit M-5C is the enquiry notice issued to him. The findings recorded against him by the Enquiry Officer are similar to those recorded against Vasudevan. It may be noted that he too has not been found guilty of assaulting Lakshman Rao.

19. The charge sheet issued to Sandhyavoo is at Ex. M. 6 A. The charge against him is identical with that levelled against Vasudevan. His reply Exhibit M-6 B. The enquiry notice issued to him is Exhibit M-6 C. The findings recorded against him by the Enquiry Officer are similar. He too has not been held guilty of assaulting Lakshman Rao.

20. So far as the domestic enquiry is concerned we find that a specific charge sheet is given to each of them; the charge sheet describes the acts alleged against them; their explanations have been called for and taken; then with the consent of both the parties, a joint enquiry has been held against them, the plea of the workmen as 'not guilty' has been recorded; thereafter 14 witnesses have been examined, one after the other, in the presence of the workmen; their representative Mr. Bernard has cross-examined every one of them very elaborately; then the workers have examined themselves and examined ten witnesses on their behalf; they have been cross-examined by the representative of the Management; some documents too have been produced during the course of the enquiry and marked in evidence; thereafter, the Enquiry Officer has heard the arguments of both sides; besides submitting his arguments orally, Mr. Bernard has submitted his written arguments

also and a copy thereof is at 'Exhibit M-24. After thus completing the enquiry, the Enquiry Officer has proceeded to record his findings. By going through his report, we find that he has dealt with the case of each workman separately marshalled the evidence led by both the sides against each workman separately ; dealt with the evidence given by each witness; and thereafter recorded his findings against each workman separately. All the accepted principles of natural justice have been followed during the enquiry. Thus, it can be seen that the enquiry can not at all be challenged on the ground of its being violative of any of the principles of natural justice. Nothing also has been said against the Enquiry Officer nor the method adopted by him in conducting the enquiry nor the manner in which he has conducted it. The only grounds of attack are that the findings recorded by the Enquiry Officer are baseless, grossly erroneous or perverse. I will deal with this ground of attack, in due course.

21. Admittedly, there was a strike in the establishment on 11th May 1966. It was a lightening tool down strike, by all the workers. The entire work was stopped. The workmen of the first shift did not go out of the factory and they were joined by the workmen of the second shift, inside the factory. The workmen of the general shifts were already there. All of them participated in the strike. The workmen left their workspots and started moving about in the premises, shouting slogans. Admittedly, no action has been taken by the Management against any workman, who merely participated in the strike without doing anything more. The Management has not punished the aggrieved workers also under Standing Order 22(2) and 22(18), though found guilty on those counts, observing as under :

> " So far as the proved acts of misconduct relating to his having struck work while on duty in contravention of the provisions of Any Act [S.O. No. 22(2)] and loitering within the Company's

premises while on duty or absence without permission from the appointed place of work [S.O. 22(18)] though on merits, deserves dismissal, we do not wish to take a very serious view because of the fact that on that day, a large number of misguided employees did illegally stop work and left their departments without permission....".

The aggrieved workers have been punished only under Standing Order 22(3) and S.O. 22(13).

22. Inciting other workmen to strike or stop work in contravention of any law or modification thereof for the time being in force, is a misconduct under Standing Order 22(3). So, two questions arise for consideration under this Standing Order. One is whether the delinquent actually incited other workers to strike or stop work and the other is whether the strike was in contravention of any law. The first is a pure question of fact. The second is a mixed question of law and fact.

23. I now proceed to consider the second question. A strike in contravention of any law is an illegal strike. Section 22 of the Industrial Disputes Act, deals with strikes and lockouts in public utility concerns. Hence we need not consider it. Section 23 deals with "general prohibition of strikes and lock-outs." It has four clauses. We will be concerned in this case with the fourth clause. namely Section 23(c). It runs as under:—

Section 23. No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of such workmen shall declare a lock-out.

(c) during any period in which a settlement or Award is in operation,, in respect of any of the matters covered by the settlement or Award.

24. The contention of the Management is that the strike resorted to by the workers on 11th May 1966 is in contravention of clause 5 of the settlement dated 23rd December 1964 (Ex. M. 2), which was still in operation then, and hence it is illegal under Section 23(c) of the Industrial Disputes Act. On the other hand, the Union, while admitting the settlement, Ex. M. 2, and its being still in operation on the day of the strike contents that the strike was not in respect of any matters covered by the settlement and hence it is not illegal. So, the point requiring decision would be whether the stirke was or was not in respect of any matter covered by the settlement at Ex. M. 2.

24. The back ground of the settlement is the charter of demands dated 24th August 1964, laid by the Union before the Management. This charter of demands is included in Ex. M. 2, as "Annexure I". This charter shows that the Union had made 19 demands in all. But the settlement relates to not only these 19 demands, but includes other matters also. If we now turn to Ex. M. 2, we find that it is divided into three parts as under :—

Part I—General (clauses 1 to 5)

Part II—Demands 1 to 19.

Part III—Proposals, 1 to 11.

Part II shows how the 19 demands in the charter were settled. The first demand related to wages. This demand was settled at the rates set out in Annexure II and Annexure III. But the parties have not stopped only by reaching a settlement with regard to the 19 demands contained in the charter. They have discussed and reached settlement over 11 other items, under the heading "proposals 1 to 11". The settlement under Proposal No. 11 is as under :—

> "It is agreed by the Company and the Association to adhere to the Code of Discipline and the grievance procedure as mentioned in Annexure IV forming a part of this settlement."

The relevant provisions in the Code of Discipline and Grievance Procedure (Annexure IV) are these :—

(1) The Company and Mico Employees Association, Bangalore, agree :—

(iii) that there should be no strike or lock-out without notice ;

(vi) that they will avoid (a) Litigation, (b) sit-down and stay-in- strikes and (c) lock-out.

(ix) that they will abide by various stages in the grievance procedure.

The mutually agreed grievance procedure is included Annexure IV.

25. By reading the Settlement (Ex. M. 2) as a whole, we find that it is a very comprehensive settlement on various matters and not restricted only to the charter of demands submitted by the Union. Mr. Bernard (W.W. 1) who is the Secretary of the Union and one of the signatories to the settlement on behalf of the union has stated in para 7 of his cross-examination :—

" During the negotiations, it is true that questions relating to maintenance of discipline in the Factory were discussed. It is true that clause (5) in Ex. M. 2 was inserted in the settlement as a result of the discussions relating to the maintenance of discipline. It is true that it was also settled that both parties should adhere to the Code of Discipline and grievance procedure as set out in the IV Annexure to the Settlemeet."

From this statement made by Mr. Bernad, is clear that the settlement at Ex. M. 2 is a comprehensive settlement and both parties are bound by it. The agreements in the three parts of the settlement Ex. M. 2, cannot be read and dealt with independently, or be considered as mutually exclusive. It shall have to be read as a whole as it is more

than likely that the agreement in one part is the consideration for the agreement in the other. Each party has made some concessions, in consideration of those made by the other. For instance, the management may have offered higher wages than those existing, because the union agreed that the workman would not go on strike without a notice. The Union may have agreed to wages at rates lesser than those mentioned in the charter of demands, because the Management agreed not to declare a lock-out without giving a notice. So, it is necessary to consider the settlement as a whole for deciding the point at issue.

26. It is evident from the settlement at Ex. M. 2, that strikes and lock-outs are not totally prohibited. The Union has retained its right to go on strike and the Management, its right to declare a lock-out. The only condition imposed in clause (5) of Part I of the settlement is that the workmen should give a notice of four days before going on strike and the Management should give a notice of four days, before declaring a lock-out. The right to go on strike and the right to declare a lock-out are only regulated by making it obligatory for each party to give a notice of four days to the other. The procedure required to be followed before embarking on strike or a lock-out is a matter covered by the settlement Ex. M. 2. This procedure has not been followed and no notice has been given by the workmen or the union on their behalf, before striking work on 11th May 1966.

27. Mr. Dolia, the learned Advocate for the Union submitted that the settlement Ex. M. 2 relates only to the settlement of the demands made by the union on 24th August 1964, and the strike on 11th May does not relates to any of those matters and so, neither clause (5) in Part I of the settlement nor Section 23(c) of the Industrial Disputes Act apply to the present case. With respect, I differ from him. An almost identical question arose for decision before the Hon'ble Supreme Court in Civil Appeal

No. 633 of 1963 (Tata Engineering and Locomotive Co., Ltd. *Vs*. Mr. C. B. Mitter, Presiding Officer, Labour Court, Ranchi). A copy of the judgment in that case has been produced before me by Mr. Dorsewamy and Mr. Dolia has no objection for my examining it The observations are these :—

> "It all began with a demand made by one of the employees of the Appellant (Tata Engineering and Locomotive Co.), Bhusan Sah by name, for a pair of gum boots....It is common ground that the strike commenced as a lightening strike without giving notice to the Appellant and there is no doubt if clause 2 of the settlement in question applies to the present case, it is illegal. By the said clause, both the Applicant and the Respondents (workmen of the Establishment) had agreed that "in no case will they resort to direct action, such as lock-outs, strikes, go-slow and other coercive action, without 4 days' notice". The case for the Appellant is that this clause will apply to all strikes, whatever their cause be, so long as the settlement is in operation. On the other hand the Respondents' contention is that this clause applies only in regard to strikes which have been declared for enforcing one or the other of the demands which formed the subject matter of the said settlement. Since the strike in question arose out of a demand for a pair of gum boots, which was not included in the charter of demands, which ultimately led to the settlement in question, clause 2 is in applicable and there is no standing order prohibiting a legitimate strike."

On the above facts, the Supreme Court has been pleased to accept the contention of the Appellant and reject that of the Respondents, observing as under :—

> "It appears that on 28th February 1959, a charter of demands was presented by the Telco Workers

Union to the General Manager of the Appellant. The demands numbered 11 in all. Negotiations then followed with the assistance of the Conciliation Officer and ultimately a memorandum of settlement was recorded on the 20th of October 1959. The preamble to the said memorandum recites that the Appellant in accordance with its established policy, was desirous of working in close and friendly relations with the recognised union, and thereby it was anxious to create conditions coducive to increased productivity, industrial peace and preventing disruption to normal working. The preamble also shows that both the Appellant and the union agreed that the demands raised by the Union by its charter would be examined by the Management on merits and taking into account financial liability and any other relevant factor without undue emphasis on regional practices. Lastly the preamble recognised that the parties could not come to terms, though they tried to understand each other's point of view and so, they sought for the intervention of the Commissioner of Labour and Conciliation Officer. It was with the assistance of this officer that the settlement was ultimately reached and its memorandum was prepared and signed by all the parties. This memorandum consists of six clauses. It begins by saying that the parties have settled their dispute as follows ; and that clearly must be the disputes which had been specific in the charter of demands. It must, therefore, be conceded in favour of the Respondents that the settlement has direct relation with the item of dispute raised by the charter and it did not purport to settle any dispute which may be raised in future."

Clause (2) of the Settlement read as under :—

> The Management and the Union agree that in no case will they resort to direct action, such as lock-outs, strikes, go-slow and other coercive action without four days' notice.

With regard to this clause, their Lordships have observed :—

> Mr. Setalvad contends that when clause (2) refers to the fact that the parties had agreed that in no case will strike be resorted to without four days' notice, it must apply to strikes for whatever reason they may have been started. In other words, the contention is that the agreement not to go on lightning strike was not confined only to strikes by reference to the items of dispute included in the charter, but to all items of dispute whatever. That, it is said, is the effect on the emphatic words "in no case" which are used in clause (2). Mr. M. Maheswari on the other hand, emphasises the fact that what the settlement purports to do is to settle the dispute in question, and so, the clauses should be read as confined to the items of dispute which had been the subject matter of the charter of demands. The words "in no case" says Mr. Maheswari, must, therefore, be read in the narrow and limited sense confined to the demands then presented before the appellant. We are unable to accept this contention. The expression "in no case" in the context clearly indicates that the agreement not to go on a lightning strike was unqualified and was not confined in operation only to the strikes which may be based on one or the other of the demands specified in the charter. It is significant that just as a lightning strike has been prohibited by this agreement, a lightning lock-out is also prohibited and it would be unreasonable to

assume that the lightning lock-out which is prohibited was intended to be confined only to the items of dispute which have been discussed between the parties."

Their Lordships have further observed :—

In this connection it may be legitimate to add that the construction for which Mr. Setalvad contends is more consistant with the spirit of the agreement and the promise made by the appellant that it would discuss all demands made by the respondents with a view to ensure harmonious relations between the employer and the employees. The four clauses of the preamble bear impress of the keen desire of the appellant to maintain peace in the establishment and this desire is reflected in the first five clauses of the settlement itself. That the respondents are required to do is not to go on lightning strikes or adopt go-slow tactics or employ other coercive action without four day's notice. A similar obligation is imposed on the management and that we think, on the whole, is very salutary agreement which the parties wisely entered into. Therefore, we are satisfied that the Labour Court was in error in holding that inasmuch as the present strike began with a demand which was not specified in the charter of demands, clause (2) of the settlement is inapplicable. In our opinion, the said clause applies and since admittedly the strike had commenced without giving four days' notice, it must be held to be illegal."

28. It is evident that the facts in the present case are practically on all fours with those in the above Telco case decided by the Hon'ble Supreme Court. In the Telco case, the settlement which was recorded on 20th October 1959 related to the charter of demands and in addition, to the

notice clause for embarking on a strike which was general in application and not connected in any way with the charter of demands The lightning strike which took place from 10th to 17th August 1961 related to none of the items of dispute in the charter of demands, but to a demand by one workman for a pair of gum boots. The workmen struck work on this issue without giving the requisite notice under clause (2) of the settlement dated 20th October 1959. The strike has been held to be illegal. In the case on hand also, the settlement relates to the charter of demands and includes a general clause regarding the issue of notice before strike. The workmen have gone on strike over the issue of Shenoy's suspension, which has nothing to do with the settlement regrading the disputes contained in the charter. No notice of four days has been given as required by clause (5) of Part I of the settlement Ex. M. 2. In these circumstances, I hold that the strike dated May 11, 1966 to be illegal, following the decision of the Hon'ble Supreme Court in the Telco case cited above.

29. Mr. Dolia has referred me to two decisions in this connection. They are:—

(1) 1967 (2) LLJ 201—Bellarpur Collieres Company *Vs.* Selim Merchant.

(2) 1966 (1) LLJ 373—State of Kerala *Vs.* Anthony D'Cruz.

The first mentioned decision is of Patna High Court and the second is that of Kerala High Court. Both the cases are easily distinguishable on facts from the present case. The facts in the Telco case are identical with the facts in this case. Hence I do not think it necessary to discuss the two decisions cited by Mr. Dolia.

30. Now that I have held that the strike of 11th May was illegal, it follows that it would amount to misconduct falling under clauses (2) and (3) of Standing Order 22 of the Standing Orders at Ex. M. 1. This answers the

second question formulated by me in paragraph 22 above. I will consider the first question later on.

33. I now proceed to examine the fourth, fifth and sixth issues. The case of the union is, that in the settlement arrived at in the evening of 11th May between the two parties as a result of which the strike was called off, it was agreed that the Management should not take any action against any of the workers with respect to any matter relating to the strike. It is argued for the union that the action now taken by the Management against the three aggrieved workers is unjustified and amounts to victimisation and hence the impugned orders require to be set aside. The management has denied it. Hence, the question arising for decision is whether any such agreement was reached in the evening of 11th May.

34. The existence of such an agreement is not an insignificant item in the settlement. It would be quite an important item and can be expected to be raised, by way of defence, at the first possible opportunity. The three aggrieved workmen have not raised this contention in their replies to the charge-*cum*-show cause notices issued to them. Its existence has not been pleaded in the domostic enquiry. I do not know whether it was raised during the conciliation proceedings. In the claim statement as well as rejoinder, the union has only said that the management had agreed not to victimise any of the workers in connection with the strike. Therein also it has not been specifically alleged that the management had agreed not to take any action against any of the workers in connection with the strike.

35. The negotiation on the 11th May were in two sessions, one in the morning and the other in the afternoon. The representatives of the union, who took part in them were Mr. Bernard (T.W. 1), Kannan, Venkob Rao and Purushottama, all office bearers of the union. The representatives of the Management were Mr. Martin (M.W. 1), the Technical Director and Gopinath, the Personnel Officer.

Mr. Bernard has stated that the settlement arrived at on the evening of 11th May was as under :

(1) The charges against Shenoy be withdrawn by the management ;

(2) The Order of suspension against Shenoy be withdrawn by the Management ;

(3) Management do pay the wages of the employees for the period of the stirke, *i.e.*, 3½ hours provided they made good the loss in production ;

(4) No action be taken by the Management against any of the employees for going on strike.

Mr. Bernard has also stated that the first three terms have been fulfilled by the Management.

36. Mr. Bernard has been cross-examined on this point. He has admitted that he argued the case of the workers before the Enquiry Officer and also submitted his written arguments before him. A copy of the written arguments is at Ex. M. 24. It makes no reference to the fourth clause of the settlement mentioned in the foregoing paragraph. When questioned, Mr. Bernard has stated that he could not say why he did not include in Ex. M. 24 the fourth clause of the agreement, *i.e.*, the Management had agreed not to take any action against any worker in connection with the stirke. The argument runs into six closely typed sheets. The Fourth clause of the agreement is not such an insignificant matter as to be easily lost sight of in Ex. M. 24. Mr. Bernard has also admitted that the aggrieved workers approached him on receipt of the charge-sheets and he assisted them in preparing their replies. When questioned on the point, Mr. Bernard has stated that he did not ask the workmen to include the fourth clause of the agreement namely that the management had agreed not to take any action against any worker in connection with the strike because he did not think it necessary to do so under

the impression that he could always approach the management and discuss the point with them. Mr. Bernard has also admitted that the management has not taken any action against the aggrieved workers for taking part in the strike.

37. It is contended by the Management that this plea taken by the union is only an after-thought and no such agreement was ever reached. The Management has examined Mr. Martin (M.W. 1) in this connection. After narrating the progress of the negotiations since the morning, Mr. Martin has stated that a settlement was reached at 5 P.M. according to him, the agreement reached was this:—

(1) The Management agreed not to pursue the question of punishment of Shenoy as he had expressed his regrets in the morning, provided Shenoy signed the letter to be issued by the Management saying that the question of his punishment was dropped because he had expressed his regrets.

(2) It was settled that the Management should consider the question of payment of wages for the hours of the stirke, provided the workers made good the deficit production on account of the loss of the working hours.

Mr. Martin has categorically sworn that nothing else was settled or agreed upon. He has been cross-examined on all points. It has been admitted by the Management in its statement of objections that the Management had agreed to pay the workers, the wages for the hours on which they were on strike provided they made good the deficit in production. Mr. Martin has stated that payment of wages for the strike period was agreed to be considered by the management if the workers made good the deficit in production. When this was brought to the notice of Mr. Martin he has stated that according to him, what is said in the objection statement is not correct. Mr. Martin was not in India when the objection statement was signed by

Mr. Vatcha, the Commercial Director and presented in Court.

38. According to both the parties, the settlement reached in the evening of 11th May was only oral. It was not reduced to writing at all. So, the only evidence on the point in question is the oath of Mr. Bernard against the oath of Mr. Martin. I feel that the account given by Mr. Bernard is not probable because, if such an agreement had been reached, it would have found a prominent place in the explanations given by the aggrieved workmen, thereafter during the enquiry and thereafter specifically in the claim statement. One could expect it to be mentioned in the correspondence between the parties soon after the charge-sheets were issued to the workmen. The Union has written the letter Ex. W. 1 to the Management on 6th June 1966, protesting against the charge-sheets issued to the aggrieved workers. Therein it has only said :—

> "It was implied and understood when the agreement was reached on the 11th May over Mr. Shenoy's case that the whole matter was closed and there will be no victimisation of the workers on account of the strike."

Even this has been denied by the Management in Ex. W. 2 dated 9th June 1966, in reply to Ex. W. 1. The union has then written the letter Ex. W. 3 to the Management on 11th June 1966. Therein it has said :—

> "The workers were asked to resume work by the Association, as desired by the Management at about 5-30 P.M on the 11th May after a settlement was reached on the dispute which was the cause for the tool-down strike. The whole issue was therefore closed on the understanding that a mutually satisfactory settlement was reached. The show cause notices issued to the five persons, is, therefore, not in keeping with the spirit in which the settlement was reached ....."

The above letter Ex. W. 3 was followed by the Resolution passed by the union on 27th June 1966. It is Ex. W. 4. The Resolution (relevant part) reads :—

> "....The General Council of the Association after carefully considering the situation obtaining in the recent pact, in particular after the tool-down strike on 11th May 1966, between the Management and the workers culminating in charge-sheeting of five workers, is of the view that the Management is determined to victimise the above workers and in pursuance of that attempt is wantonly issuing threats...."

The reply given by the Management to the Union with respect to the above resolution is Ex. W. 5, and is dated 29th June 1966.

39. The important point to be noted is that clause four of the settlement dated 11th May, as stated by Mr. Bernard was an important item, which should not only naturally, but necessarily have found place in Exts. W. 1, W. 3 and W. 4. Its absence from these documents is very significant. It may be true (as alleged in the claim statement and the rejoinder) that the management had agreed not to victimise any worker for taking part in the strike. In fact it has not victimised any worker, including the three aggrieved workers, for participating in the strike. Taking disciplinary action against an erring workman does not necessarily or always amount to his being victimised by the Management. The agreement "not take any action" against a workman cannot be equated with an agreement "not to victimise" him. Agreement or no agreement, if a workman proves that the Management has taken some action against him, prompted by a spirit of victimisation, he is entitled to get a suitable relief at the hands of the court. In these circumstances, I am of the view that the union has not proved that the Management had agreed not to take any action against any worker in connection with the strike and record my finding on the fourth issue accordingly. In

view of this finding on the fourth issue, the fifth and sixth issues do not survive. Hence I record my finding on them, accordingly.

40. Now I proceed to consider the first issue. The three aggrieved workers have been charge-sheated for misconduct; a domestic enquiry has been held against them; and they have been dismissed on the ground of their having been found guilty. The Management has not led any additional evidence against them before me to prove the charges levelled against them. Action has been taken against them only under Standing Order 22(3) and 22 (13). I have already held that the strike resorted to by the workmen was an illegal strike under Section 23(*c*) of the Industrial Disputes Act, read with Clause (5) of the I Part of the settlement at Ex. M. 2.

41. The principles which govern the power of an Industrial Tribunal to interfere with the decision of an employer following the domestic enquiry made by him have been laid down by the Supreme Court in Indian Iron and Steel Co., Ltd., *Vs.* Their workmen (1958-1-LLJ 260). This decision has been followed and reaffirmed in various subsequent decisions. It has been laid down that in case of dismissal on misconduct, the Tribunal does not, however, act as a court of appeal and substitute its own judgment for that of the Management. It can, however, interfere when :—

(1) There is want of good faith;

(2) There is victimisation or unfair labour practice;

(3) The Management has been guilty of basic error or violation of principles of natural justice; and

(4) on the materials the finding is completely baseless or perverse.

The Union, in its statement of claims and rejoinder, has condemned the enquiry on all the grounds mentioned above.

42. I have set out the manner and method adopted by the enquiry officer at the domestic enquiry in paragraph 20 above. I have pointed out that the domestic enquiry has been conducted in full conformity with the recognised principles of natural justice. Hence I am of the view that the impugned orders can not be challenged on the ground of the violation of the principles of natural justice.

43. Was the Management lacking in good faith or prompted by a spirit of victimisation in taking this action against the three workers, is the next question. Judicial decisions show that want of good faith cannot be inferred merely on the basis of allegations. Some tangible evidence is necessary to hold the allegation as proved. Mr. Bernard (W.W. 1) who is the Secretary of the Union has said nothing to indicate that there was any want of good faith on the part of the Management. The second witness is Prabhakar. He was an officer of the Union for some years. He has traced the history of some office bearers. He has stated that in 1964 there were two criminal complaints against him and the security officer working under the Management was helping the complainants against him; in 1963, the then Secretary of the Union had prosecuted Sandhyavoo; and the Management had, once before, taken action against Vasudevan for assaulting Sheshayya, the Labour Officer. Even assuming these facts as proved, they do not establish want of good faith on the part of the Management in the present action taking by it. I agree that want of good faith cannot be proved by direct evidence in all cases. But there should be on record, atleast some circumstances, for drawing a reasonable inference of want of good faith on the part of the Management. Even such circumstances have not been placed on record, in this case. It is, however, urged on behalf of the Union, that when hundreds of workmen had struck work, the act of the Management in picking out the aggrieved workers only for being proceeded against, spells out either want of good faith or victimisation. But it can be seen that the workers in

this case have not been punished for participating in the strike. The charge against them is that they did some over tacts, such as inciting other workers and behaving in a rowdy manner. Another point urged for the union is that though the acts alleged against the workers are said to have been committed by them in the afternoon of 11th May, no action has been taken against them and no complaint has been laid against them by Lakshman Rao till the 18th May and this indicates that the management has manipulated the case with some ulterior motive and this would amount to want of good faith or victimisation.

44. It is true that Lakshmana Rao has laid the complaint against these workers on May 18, *i.e.*, some days after the incident. The delay in lodging the complaint may have to be considered in the context of what evidenciary weight should be given to it and nothing more. The entire incident relating to the present charge against the workers is said to have taken places between 3 P.M. and 3-30 P.M. inside the G. 2 Department on May 11. Even Mr. Bernard (Para 15) has stated that none of them sitting in negotiations meeting, either on the side of the union or on the side of the management were knowing what was going on in the G. 2 Department. So the incidents that are said to have taken place in the G. 2 Department can not possibly have been discussed at the meeting ending with the settlement reached at about 5 P.M. Want of good faith and/or victimisation cannot be inferred from these facts also. The union has catalogued in paragraph 14 of the claim statement the grounds on which, it attacks the domestic enquiry and the findings recorded by the enquiry officer, in clause (*a*) to (*k*). No specific grounds or reasons have been given therein to attribute want of good faith or victimisation to the Management, in the present action taken by it against the aggrieved workmen. No ulterior motives have been alleged against Lakshmana Rao also for picking up only five workers for lodging the complaint. Hence I am of the view that there is no evidence to hold want of good faith and/or victimisation on the part of the Management.

45. The next question is whether there has been any unfair labour practice on the part of the Management. On this point too, I should say, that there is no evidence worth the name. On May 12, 1966 Management has issued the circular letter addressed to all the workers and exhibited it on the notice board. The copy thereof is at Ex. W. 7. It is an appeal to the workers. Therein it has reproduced the letter written by it to Mr. Shenoy. The copy of that letter is also produced at Ex. M. 21. It has also addressed the letter Ex. M. 22 to the Union, on the same day. Then on 24th May 1966, it has written the letter Ex. W. 8 to the Assistant Commissioner of Labour asking him whether it was not justified in withdrawing its recognition of the Union. It is urged for the union that the direct appeal made by the Management to the workers and its letter to the Assistant Commissioner of Labour seeking the withdrawal of the recognition of the union, indicate that the Management was bent upon crushing the union and the spirit of collective bargaining of the workers and all this amounts to unfair labour practice. I do not think that such an inference can be drawn from these letters, though I should say, that the writing of these letters was not necessary.

46. The last question is whether the Management has been guilty of any basic error and the findings recorded by the enquiry officer are completely baseless or perverse. I have gone through the entire evidence led by both the parties at the domestic enquiry. In the complaint Ex. M. 3, Lakshman Rao, has specifically mentioned the names of all the five workers. In his deposition, he has stated what all the five workers were doing. He has been subjected to a very searching cross-examination. In his report, the enquiry officer has set out the substance of the evidence against each worker and what the defence witnesses have said in his favour. He has believed the evidence led by the Management in preference to that led by the defence. This court cannot reasses the evidence and come to its own conclusions on the issues involved. It cannot act as an appellate authority. The view taken by the Enquiry officer

is a possible view. Worker Jayaram was charged under four counts namely, clauses (2), (3), (13) and (18) of S.O. 22. The worker Sreedhar was charge-sheeted on two counts under S.O. 22 (3) and (13). The enquiry officer has exhonorated Jayaram of the charges under S.O. 22 (3) and(13) and held him guilty of only the charges under S.O. 22 (2) and (18). He has completely exhonorated the other worker Sreedhar. The report shows that the enquiry officer has applied his mind to the evidence placed before him, discussed it, and then came to the conclusions reached by him. He has absolved all the workers of the charge of assaulting Lakshman Rao. After going through the evidence led at the domestic enquiry and the findings recorded by the enquiry officer, I am not disposed to say that the Management is guilty of any basic error and the findings of the enquiry officer are completely baseless or perverse. Hence I record my finding on the first issue against the union, on all parts.

47. Mr. Dolia, the learned Advocate for the Union, has cited some judicial decisions before me and I now proceed to consider them. The decisions cited by him are :—

(1) 1966 (1) LLJ 605 (Raja Textiles Ltd., *Vs.* Kishorilal Sharma).

(2) 1965 (2) LLJ 102 (Powari Tea Estate *Vs.* Barkatalli).

(3) 1966 (1) LLJ 373 (State of Kerala *Vs.* Anthony D'Cruz).

(4) 1964 (1) LLJ 634 (Samnuggur Jute Factory Co., Ltd., *Vs.* Their Workmen).

(5) 1963 (2) LLJ 452 (Khardah & Co. Ltd,, *Vs.* Its workmen).

(6) 1966 (2) LLJ 282 (Howrah Trading Co., *Vs.* Fourth Industrial Tribunal).

(7) 1959 (1) LLJ 450 (Burn & Co., *Vs.* Their Workmen).

(8) 1967 (2) LLJ 201 (Bellarpur Collieries *Vs.* Salim Merchant).

Out of these eight decisions, serial No. 8 and serial 3 relates to 'strikes' and the others relate to principles relating to domestic enquiries. The Kerala High Court has held in 1966 (L) LLJ 373 that a strike embarked upon by the workers during the pendency of a valid settlement is an illegal strike under Section 23 (c) of the Industrial Disputes Act. The Patna High Court has held in 1967 (2) LLJ 201 that a strike resorted to by the workmen in breach of the Standing Orders would not make the strike illegal. The management has not taken action against the aggrieved workmen, in this case, for breach of any contract in the Standing Orders but for having acted contrary to a subsisting valid settlement. Hence these decisions of the Kerala and Patna High Courts do not help the Union, in any way.

48. The Allahabad High Court has held in 1966 (1) LLJ 605 that finding of victimisation is generally a question of fact and such a plea cannot be taken before the domestic Tribunal and it arises only after action is taken against the workers. The Supreme Court has held in 1965 (2) LLJ 102 that a domestic enquiry must strictly satisfy the essential requirements of natural justice and it is necessary that the enquiry officer should make a report indicating clearly his conclusions and the reasons in support of it. Both of these conditions are satisfied in the domestic enquiry held in this case. In 1964 (L) LLJ 634, the Supreme Court has emphasised the need of the enquiry Officer's report at the end of the domestic enquiry and said that want of it is a serious infirmity. Such a flaw does not exist in this case. In 1963 (2) LLJ 452, the Supreme Court has laid down principles that must generally be followed in holding a domestic enquiry and further held that that failure to record any finding after holding an enquiry is a serious infirmity. The Calcutta High Court has dealt with the situation when "leading questions" were put to the witnesses of the Management during the domestic enquiry, in 1966 (2) LLJ

282, and laid down how they should be evaluated. It has also emphasised the need of the report by the enquiry officer at the end of the domestic enquiry, containing his findings and the reasons to reach them. In 1959 (1) LLJ 450, the Supreme Court has observed :—

> "....It could not be said that a mere participation in the strike would justify their (Workmen's) suspension or dismissal, particularly when no clear distinction could be made between these persons and the very large number of workmen who had been taken back into service although they had participated in the strike."

This decision also does not help the Union, because, the Management has not dismissed the workers for merely participating in the strike. In the judgments passed against Vasudevan, the Management, after saying that it would not taken any action against him for participation in the illegal strike, has said :—

> " However, we find that Mr. Vasudevan did not stop there, but, along with others entered the G. 2 Department, took a leading part in inciting the clerks and officers working there to stop work, come out and join the strike [S.O. 22 (3)]; intimidated the officers, behaved in a riotous and disorderly manner and indulged in acts subversive of discipline."

Identical observations have been made by the Management in the judgments against Sandhyavoo and Prabhakar. Something more than mere participation in the strike was alleged against these three workmen, and they were found guilty. Hence the decision in 1959 (1) LLJ 450 would not help the union.

49. To conclude the discussion, I find that the strike was illegal ; the union has not proved that the Management had agreed not to take any action against any of the workers in connection with the strike ; the aggrieved workmen are

found guilty of the domestic enquiry, which has been held consistently with all principles of natural justice ; the union has not proved want of good faith, victimisation of unfair labour practice on the part of the Management ; and the findings of the enquiry officer are not perverse. Hence I do not find any reason to interfere with the orders of dismissal passed by the Management. The three aggrieved workers are not entitled to reinstatement. Hence I record my finding on the second issue accordingly.

50. In the result, I make the following Award :—

AWARD

This reference and the demands made by the three aggrieved workmen, Sandhyavoo, Prabhakar and Vasudevan and the First Party Union on their behalf do stand rejected with no order as to costs.

P. T. KADKOL,
Presiding Officer,
Labour Court, Bangalore.

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P. T. KADKOL,
Presiding Officer
Labour Court, Bangalore.
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